

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SAMUEL G. BREITLING AND JOANN § IN THE DISTRICT COURT
S. BREITLING §
Plaintiffs, §
 §
 §
vs. § CIVIL ACTION NO. 3:15-cv-00703
 §
LVN CORPORATION, ET AL., §
Defendants. §**

PLAINTIFFS' MOTION FOR REMAND

Respectfully submitted,

McKENZIE, SCHATZ & MILKS, P.L.L.C

By: /s/ J.D. Milks
J.D. Milks
Texas Bar No. 24045106
Email: jdmilks@smartmovetx.com
1615 W. Abram Street, Suite 110
Arlington, Texas 76013
Tel. (817) 653-4240
Fax. (817) 687-7040
Attorney for Plaintiff
Samuel G. Breitling and Jo Ann Breitling

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PLAINTIFFS' MOTION FOR REMAND AND BRIEF IN SUPPORT THEREOF

Pursuant to 28 U.S.C. §1447 of the Federal Rules of Civil Procedure, Samuel G. Breitling and Jo Ann Breitling (“Plaintiffs”) file this Motion for Remand and respectfully show the Court:

1. Concurrent with the filing of this Motion, Plaintiffs have filed a Motion for Leave to Amend. Plaintiffs’ proposed amended complaint is attached thereto as Exhibit 1 and included here as Exhibit 1 for the court’s convenience. Under no circumstances do Plaintiffs intend to waive their right to seek remand by the filing of Plaintiffs’ Motion for Leave to Amend.

2. On February 20, 2015, Plaintiff filed their Notice of Nonsuit without Prejudice as to former Defendant, Judge Dale B. Tillery of the 134th Judicial District Court of Dallas County. On March 3, 2015, Defendants LVN Corporation (“LVN”), MGC Mortgage, Inc. (“MGC” and Dovenuehle Mortgage, Inc. (“Dovenmeuhle) filed a Notice of Removal pursuant to 28 U.S.C. §§ 1331 and 1446. The sole basis of the Defendants’ removal was federal question jurisdiction.

See Defendants’ Notice of Removal, Pg. 6. Federal question jurisdiction arises under the August 29, 2014 pleading Plaintiffs’ filed as pro se litigants. Because Plaintiffs’ proposed

amended pleading simplifies the issues and parties and the court will lack subject matter jurisdiction over Plaintiffs' amended pleading, Plaintiffs ask that this matter be remanded to state court for further proceedings.

3. Courts strictly construe the removal statutes in favor of remand and against removal. *Bosky v. Kroger Tex., LP*, 288 F.3d 208, 211 (5th Cir. 2002). Where a plaintiff has a "substantial and meritorious reason" to amend its complaint and remove federal claims other than simply to defeat federal jurisdiction, a court may remand the case to state court. *See Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 448 (4th Cir. 2004). The Supreme Court has consistently held that the presence of absence of federal question jurisdiction is governed by the "well pleaded complaint rule", which provides that federal question jurisdiction exists only when a federal question is presented on the face of a plaintiff's properly pleaded complaint without consideration of potential defenses. *Aetna Health, Inc. v. Davilla*, 542 U.S. 200, 159 L. Ed. 2d 312, 124 S. Ct. 2488, 2494 (2004).

4. Plaintiffs have not previously sought leave to amend and have been unrepresented by counsel since July 30, 2014. Plaintiffs' proposed amended complaint removes claims for violation of the TILA, RESPA, and the FDCPA. Plaintiffs' remaining claims deal exclusively with causes of action arising under Texas law, Article 16, Section 50 of the Texas Constitution, and the interpretation of the Texas Rules of Civil Procedure. Accordingly, the federal court lacks subject matter jurisdiction and this case is properly remanded back to state court.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the court grant Plaintiffs' Motion for Remand and after considering Plaintiffs' amended complaint, remand this case to state district court for further proceedings, and for such other and further relief as

Plaintiffs might show themselves to be justly entitled.

Respectfully submitted,

MCKENZIE, SCHATZ & MILKS, P.L.L.C

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J.D. Milks
Texas Bar No. 24045106
Email: jdmilks@smartmovetx.com
1615 W. Abram Street, Suite 110
Arlington, Texas 76013
Tel. (817) 653-4240
Fax. (817) 687-7040
Attorney for Plaintiffs
Samuel G. Breitling and Jo Ann Breitling

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record via the Court's CM/ECF system, regular mail, and/or certified mail, return receipt requested on the 27th day of March, 2015.

/s/ J.D. Milks
Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

On March 26, 2015 a conference was held with Jason Breitling, attorney for LNV Corporation, MGC Mortgage, Inc. and Dovenmuehle Mortgage regarding the relief requested herein. Counsel was opposed to the requested relief and prefers to proceed in federal court.

/s/ J.D. Milks
Counsel for Plaintiffs